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EXAMINER

DURAN, ARTHUR D

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/808,538	<b>Applicant(s)</b> MOWRY, CRAIG	
	<b>Examiner</b> Arthur Duran	<b>Art Unit</b> 3622	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/21/07.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-16, 18, 20, 24, 28-32, 34, 39, 40, 56-78, 85 and 86 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-16, 18, 20, 24, 28-32, 34, 39, 40, 56-78 and 85, 86 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 2-16, 18, 20 24, 28-32, 34, 39-40, 56-78, and 85, 86 have been examined.

#### ***Response to Amendment***

2. The Amendment filed on 11/21/07 is insufficient to overcome the prior rejection.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/21/07 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-16, 20 24, 28-32, 34, 39-40, 56-69, 71-78, and 85, 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greening (2001/0013009) in view of Harvey (2002/0059379).

Claims 85, 86 and 2, 15, 16, 20, 29-32, 34, 55-69, 71-78:

Greening discloses providing an electronic architecture which stores data related to individual personal traits and preference;

Receiving personal trait and preference data from one or more individuals;

Compiling the received data;

Storing the compiled data into records in the electronic architecture searchable by micro-demographics;

Enabling the searching of the records based on the micro-demographics (Fig. 1; 2; 4; 5; 7; 8; 11; and the below):

“[Abstract] A marketing system and method predicts the interest of a user in specific items--such as movies, books, commercial products, web pages, television programs, articles, push media, etc.--based on that user's behavioral or preferential similarities to other users, to objective archetypes formed by assembling items satisfying a search criterion, a market segment profile, a demographic profile or a psychographic profile, to composite archetypes formed by partitioning users into like-minded groups or clusters then merging the attributes of users in a group, or to a combination. The system uses subjective information from users and composite archetypes, and objective information from objective archetypes to form predictions, making the system highly efficient and allowing the system to accommodate "cold start" situations where the preferences of other people are not yet known (Abstract).

[0020] In sum, the present invention provides a marketing system and method which:

[0021] uses the item preferences or item-related behaviors of a user to find

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other people with similar preferences, then uses those people to predict the user's response to new items; can produce a reasonably accurate predicted rating, even when no other person has rated an item; incorporates both subjective criteria (user preferences and behaviors) and objective criteria (attributes of items or market data) to make the best possible recommendation; performs collaborative filtering using the combined wisdom of groups of like-minded people; can use an existing database of items, classified by different characteristics; builds a database of "mentors" who have high affinity to specific users, which mentors can be used to infer various characteristics of the users; composes archetypes that represent bodies of thought, points of view, or sets of product preferences found in a group of people; and substitutes for demographic and psychographic characterizations of groups of people.

[0048] The composite archetype process 103 successively finds user groups satisfying a criterion indicating like-mindedness using a find like-minded group step 112. The criterion can include demographic or psychographic information stored in the rater table 118, or can be based solely on similar ratings found in the rating table. Then a build composite archetype step 113 computes the ratings of the composite archetype from the ratings of the raters in the group, and stores the composite ratings in the rating table 119. This process is described in more detail below.

[0064] If the decision 202 is the predict rating step 107, the system next gets

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a requested item using a get item step 204. The get item step 204 gets a criterion by the user selecting the item from a menu or entering the name of the item in a search field, then finding the unique item satisfying the criterion. Another embodiment allows a broader criterion, and the method then obtains successive predictions for each item satisfying the criterion.

[0065] Next, a build prediction vector(item) step 207 calls the build prediction vector subroutine with a search criterion that predicted items must satisfy. The build prediction vector subroutine fills in the prediction vector and returns.

[0080] FIG. 7 is a flowchart showing of steps in the composite archetype process 103. This process finds groups of like-minded raters, merges them into a single rater, and stores the result. First, a find like-minded group step 112 finds user groups satisfying a criterion indicating like-mindedness. The criterion can be based on demographic or psychographic information stored in the rater table 118, or on users clustering around similar ratings found in the rating table 119.

[0081] One embodiment for finding like-minded groups views the situation as a partitioning problem over all the users, which problem is to optimize the overall like-mindedness of each partition. Each partition then becomes a like-minded group for the find like-minded group step 112”.

Greening does not explicitly disclose that the individual user can search the demographics database.

However, Harvey discloses that the individual user or a member can search the demographics database of users or members:

“[0087] Another set of functions are related to finding, creating and building communities. A Create Function 3025 may allow a user to create a new community, as set forth above in FIG. 2. An Invite Function 3035 may allow a user to invite others to join a community. A Navigation Function 3030 may allow a user to browse through a hierarchical representation of communities and content to find communities they may wish to join or community content they want to view. A Pal Function 3040 may allow a user to maintain a "Pals" list of people whom they wish to have available for communication at all times. A Search Function 3045 may enable a user to search for communities, vendors, products or users. An Exit Function 3055 may enable a user to exit a community. A Community Store 3050 Function may enable a user to purchase items. Various functions will now be described in greater detail below.

[0119] Field Matching

[0120] A user may select Search Function 3045 to search for communities, users, vendors, and/or products. As described above, a creator may designate one or more community fields, and a user may designate a user field. According to an embodiment of the invention, a vendor may designate a vendor field. A vendor may have a product to sell to one or more users and/or communities. A vendor may describe the product by providing information for vendor fields. Vendor fields may comprise a category or categories of interest, language, location,

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age group, and meta-tags of interest associated with the product. According to an embodiment of the invention, vendor fields, community fields, and user fields may have corresponding information. Central controller module 115 may have a field matching function associated therein to match users, communities, and vendors based on the fields provided. A user may provide information in a user field. According to an embodiment of the invention, a user may designate user fields when creating a profile. User fields may also be designated by signing on to a mailing list. Field matching may occur periodically, (e.g., hourly, daily, weekly, etc.) and the results may be presented to a user.

According to an embodiment of the invention, field matching results may be presented when a user enters a community, such as when a user enters (e.g., logs into) a community. Field matching results may be presented to the user.

By way of example, a user may enter the "Omaha Sailing Club" community and be presented with vendor fields and community fields. The vendor field may describe a book, in english, about sailing races around the world. The community field may describe another newly created sailing community, where the membership is in Lincoln, Nebr. According to another embodiment of the invention, a community may have a field matching area, where a user may access the field matching function to learn about other products and/or communities.

A user may provide information for a user field, and may activate the field matching function. Other manners of field matching may also be used.

[0135] In either case, on the user's first visit, the user is prompted to



register, and does register with the service via central controller at steps 535 and 540 so that information can be gathered as necessary prior to game play. A registration form (or other means for providing the requested information) is completed by the user and may then be sent by client 110 to central controller module 115 at step 545. Information completeness is checked at step 550. If the information provided by the user is incomplete, follow-up questions may be sent to the user at step 555. The user then provides answers to follow-up questions 560”.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Harvey’s user searchable database of users to Greening’s searchable database of users with similar interests. One would have been motivated to do this in order to allow communication or resource sharing between users with similar interests.

In regards to claim 31, Harvey discloses utilizing message boards for communicating ([2], [5], [8]). It would be obvious that Greening’s users can utilize a message board as a message board is a standard way of users to communicate utilizing the Internet.

Additionally, Greening further discloses identifying preference data for at least one of a plurality of persons as a function of a user parameter entered or providing preference data based on the user parameter entered. Greening discloses that a demographic or psychographic piece of information or piece of profile can be entered for a user(s) in order to determine a user(s) preference for a book or movie or other area of interest or other preference (Figure 7; Paragraphs [9, 10, 14, 15, 16, 21, 45, 48, 80, 127].)

Additionally, Greeing further discloses registering users ([39]).

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Greening discloses providers of goods services ([15,49,126]).

Harvey discloses Providers of goods services ([123])).

Greening discloses tracking brand preference of users and brand info from providers of goods or services ([8, 126]).

Greening further discloses providing search results of preferences, providing search results that include brand preferences ([126,127]). Also, Greening discloses the importance of brands ([8]).

Also, note that the combination of the prior art discloses that multiple searches can be performed and that different search parameters can be entered or different result sets/information items of interest to be returned can be sought.

Additionally, in further regards to independent claims 85 and 86, Greening discloses a "first search result" that includes "at least some of available personal preference information from at least one member that corresponds directly to the search criteria," and a "second search result" that includes "personal preference information from the at least one member" and that is at least in part "included in the first search result.""

Greening renders obvious, as stated in the claims amendments dated 11/21/2007, the following features in independent claim 85 and 86:

“receiving from the user search criteria that represents at least one personal trait and at least one category of personal preference information that selectively relate to the searcher;

performing a first search of the database as a function of the search criteria and retrieving the first search result, wherein the first search results includes at least some of available personal preference information from at least one member that corresponds directly to the search criteria;

providing the first search result to the searcher via the internet site;

performing a second search of the database for the second search result, wherein the second search result includes personal preference information from the at least one member and that is at least in part included in the first search result, and further wherein the second search result includes personal preference information from the at least one member or at least one other member and that is not included in the first search result; and

providing the second search result to the searcher distinctly from the first search result information provided via the internet site. (Figure 11, Figure 12; [18, 21, 37, 48, 124, 125, 127]; claims 1, 13)''.

Note in these cited Figures, paragraphs, and claims, that Greening discloses a first search of the database to find members/users/mentors who are similar to the searching user. Note that this first search can be performed based on a personal trait(s) and category. Next, note that Greening discloses that a second search can be done where the first search results of related members is searched to find a priorly unknown preference of the related members to report back to the searcher.

For example, in Figure 11, Greening discloses that a searcher find related member/mentors based on preference and a category (Figure 11, item 902). Then, Greening uses the returned, related mentors set to search for a new preference to report back to the searcher. In this case, Greening reports back a rating on a movie that the searcher has not yet seen. Also, note that his Figure 11 is interpreted in light of the rest of the Specification of Greening and in particular in light of the cited Figures, paragraphs, and claims preceding.

As another example, in Figure 12 (described in [124] of the Specification of Greening and displayed in the parent Provisional Application 60/047,220), Greening discloses a first search where searchers (Figure 12, item 923) find related users/mentors based on a personal trait/preference and a category (Figure 12, item 921). Then, the searchers find the book recommendations of interest based on the related results of the first search ([124]).

Hence, Greening renders obvious a "first search result" that includes "at least some of available personal preference information from at least one member that corresponds directly to the search criteria," and a "second search result" that includes "personal preference information from the at least one member" and that is at least in part "included in the first search result".

Claim 2-10, 24: Greening further discloses providing incentives, advertisements, advertisements inciting purchasing, and correlating or cataloguing advertisements and products ([15]; [49]; [126]).

Claim 11: Greening further discloses that the personal preference data includes visual and audio data of the one or more individuals ([34]).

Harvey further discloses that the personal preference data includes visual and audio data of the one or more individuals ([55]).

Claims 12-14, 28, 39, 40: Greening further discloses presenting questions to the user ([15]).

Harvey further discloses presenting questions to the user ([135]).

4. Claims 18 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greening (2001/0013009) in view of Harvey (2002/0059379) in view of Masi (6,105,001).

Claim 18, 70: Greening does not explicitly disclose receiving incentives in response to recruiting others to input their personal preference data.

However, Masi discloses rewarding users for recruiting new members (col 4, lines 30-35; col 4, lines 55-62).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Masi's rewarding users for recruiting new members to Greening's new members and members providing personal information. One would have been motivated to do this in order to provide a way to increase the users utilizing the system.

#### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are not found persuasive.

On page 15 of the Applicant's Remarks dated 11/21/2007, Applicant states:

"Neither Harvey nor Goldstein teaches, suggests or discloses the missing features of claims 85 and 86, including a "first search result" that includes "at least some of available personal preference information from at least one member that corresponds directly to the search criteria," and a "second search result" that includes "personal preference information from the at least one member" and that is at least in part "included in the first search result.""

Also, in the claims amendments dated 11/21/2007, Applicant states the following features in independent claim 85. Greening renders obvious these features of claim 85:

"receiving from the user search criteria that represents at least one personal trait and at least one category of personal preference information that selectively relate to the searcher;

performing a first search of the database as a function of the search criteria and retrieving the first search result, wherein the first search results includes at least some of available personal preference information from at least one member that corresponds directly to the search criteria;

providing the first search result to the searcher via the internet site;

performing a second search of the database for the second search result, wherein the second search result includes personal preference information from the at least one member and that is at least in part included in the first search result, and further wherein the second search result includes personal preference information from the at least one member or at least one other member and that is not included in the first search result; and

providing the second search result to the searcher distinctly from the first search result information provided via the internet site” (Greening, Figure 11, Figure 12; [18, 21, 37, 48, 124, 125, 127]; claims 1, 13)”.

Note in these cited Figures, paragraphs, and claims, that Greening discloses a first search of the database to find members/users/mentors who are similar to the searching user. Note that this first search can be performed based on a personal trait(s) and category. Next, note that Greening discloses that a second search can be done where the first search results of related members is searched to find a priorly unknown preference of the related members to report back to the searcher.

For example, in Figure 11, Greening discloses that a searcher find related member/mentors based on preference and a category (Figure 11, item 902). Then, Greening uses the returned, related mentors set to search for a new preference to report back to the searcher. In this case, Greening reports back a rating on a movie that the searcher has not yet seen. Also,

note that his Figure 11 is interpreted in light of the rest of the Specification of Greening and in particular in light of the cited Figures, paragraphs, and claims preceding.

As another example, in Figure 12 (described in [124] of the Specification of Greening and displayed in the parent Provisional Application 60/047,220), Greening discloses a first search where searchers (Figure 12, item 923) find related users/mentors based on a personal trait/preference and a category (Figure 12, item 921). Then, the searchers find the book recommendations of interest based on the related results of the first search ([124]).

Hence, Greening renders obvious a "first search result" that includes "at least some of available personal preference information from at least one member that corresponds directly to the search criteria," and a "second search result" that includes "personal preference information from the at least one member" and that is at least in part "included in the first search result".

Examiner further notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

Examiner notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under §103.

If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, §103 likely bars its patentability. Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. *KSR Int'l Co. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007).

Also, KSR states that it is obvious to recite combination which only unite old elements with no change in their respective functions and which yield predictable results. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

### ***Conclusion***

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a) Bergh (6,112,186) discloses matching similar users;
- b) Bieganski (6,321,221) discloses matching similar users;
- c) Goldhaber (5,794,210) discloses a user demographic database;
- d) Messina (2003/0061215) discloses users searching for users with similar characteristics:



“[0006] Another related problem is that the planetary scope of the Internet makes it difficult for users to find and communicate with other users who share interests in similar kinds of information. Websites, chat rooms, and forums devoted to particular topics, such as health, have emerged in recent years. However, the information shared through these websites, chat rooms, and forums is too often sparse and of poor quality, since many participants behave as spectators and do not actively contribute information. Moreover, direct competition between the websites, chat rooms, and discussion forums for users generally leads to smaller, fragmented communities of users, thwarting development of larger aggregate communities”.

e) Dalal (2002/0065894) discloses users searching for users with similar characteristics:

“[0003]...Users can create a personal network using search engines to locate others with similar backgrounds and/or interest. Current instant messaging systems use presence servers, but these are limited in that they do not all support the variety of terminal devices that may be employed by a customer of the service”.

f) MacNaughton (6,020,884) discloses users searching for users with similar characteristics:

“(22) The present invention allows Web users to form on-line relationships with Community members, to communicate with others of similar interest or backgrounds, and to view Community content. The Communities of the present invention may serve as a starting or focal point for Web navigating. The present invention provides a structure for a Web experience and helps users

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avoid being overwhelmed or overloaded by the complexity of the Web. The features and benefits of the present invention may be better understood by referring to the following description in conjunction with the accompanying drawings.

(17). .. A membership capability may include functions that support listing (list of members currently participating in a community), profile (access member profile data), modify (personal profile data), and search (community membership), etc”.

g) Sutcliffe (6,052,122) discloses users searching for users with similar characteristics:

“(13) As the popularity of the Internet has increased, some newspapers and other print publications now provide personal advertisements on various web sites. One such example is an on-line personal advertisement system having a plurality of users. Each user selects a set of criteria, such as height, body type, and interests, that must be met by another user. Upon request of a user, the system searches the database for other users that meet the criteria of the requesting user. In this way, a list of potential candidates is provided that the user may have an interest in contacting to begin a relationship or engage in activities of mutual interest”.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571)272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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2/5/2008